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Attorneys for Defendant GenScript USA, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTHERN DISTRICT OF NEW YORK

<p>FREEPLAY MUSIC, LLC, v. GENSCRIPT USA, INC.,</p> <p style="text-align: center;">Plaintiff, Defendant.</p>	<p>Civil Action No.: 1:14-cv-942 (AJN)</p> <p>ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT</p> <p>JURY TRIAL DEMANDED</p>
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Defendant GenScript USA, Inc. ("GenScript" or "Defendant") hereby submits its Answer and Affirmative Defenses to Plaintiff's Complaint pursuant to Rule 8 of the Federal Rules of Civil Procedure. All allegations not specifically admitted by this Answer are generally denied.

PARTIES, JURISDICTION AND VENUE

1. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 1.
2. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 2.
3. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 3.

GenScript USA, Inc.

4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. This statement constitutes conclusions of law for which no reply is required. To the extent that any response is required, the allegations contained in this paragraph 10 are denied and Plaintiff is left to its proofs.

11. Denied.

12. Denied.

13. Denied.

14. Admitted.

15. This statement constitutes conclusions of law for which no reply is required. To the extent that any response is required, the allegations contained in this paragraph 15 are denied and Plaintiff is left to its proofs.

16. This statement constitutes conclusions of law for which no reply is required. To the extent that any response is required, the allegations contained in this paragraph 16 are denied and Plaintiff is left to its proofs.

FACTS RELEVANT TO ALL CAUSES OF ACTION

OWNERSHIP OF VALID COPYRIGHTS

17. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 17.

18. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 18.

19. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 19. To the extent that any documents are referenced in this paragraph 19, the documents speak for themselves.
20. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 20.

THE WEBSITE

21. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 21.
22. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 22.
23. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 23.
24. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 24.
25. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 25.
26. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 26.
27. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 27.
28. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 28.
29. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 29.

CLAIM FOR RELIEF

(Direct Copyright Infringement Against GenScript USA, Inc.)

30. Defendant repeats and realleges its answers to the allegations above in paragraphs 1 through 29 as if same were fully set forth at length herein.
31. Denied.
32. Admitted that GenScript published several videos introducing its products and services on its website and youtube.com. The remaining allegations contained in this paragraph 32 are denied.
33. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 33.
34. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 34.
35. Admitted that GenScript had no knowledge that Plaintiff has copyrights in the Songs. The remaining allegations in this paragraph 35 are denied and Plaintiff is left to its proofs.
36. Denied.
37. Admitted that GenScript received a notice from Tunesat, LLC. The remaining allegations contained in this paragraph 37 are denied and Plaintiff is left to its proofs.
38. Denied.
39. Denied.
40. This statement constitutes conclusions of law for which no reply is required. To the extent that any response is required, the allegations contained in this paragraph 40 are denied and Plaintiff is left to its proofs.

DAMAGES AND REMEDIES

41. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 41.
42. Defendant has insufficient knowledge or information by which to admit or deny the allegations contained in paragraph 42.
43. Denied.
44. Denied.
45. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim for Relief)

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

Plaintiff's claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE
(Innocent Intent)

Plaintiff's claims are barred, in whole or in part, GenScript's conduct was in good faith and with non-willful intent, at all times.

FOURTH AFFIRMATIVE DEFENSE
(Undue Process)

Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process clause.

FIFTH AFFIRMATIVE DEFENSE
(Estopel/Laches)

Plaintiff's claims are barred or limited, in whole or in part, by the doctrine of estoppel and/or laches.

SIXTH AFFIRMATIVE DEFENSE
(Damage Caused by Nonparties)

Plaintiff's alleged damages, if any, were caused by third parties other than Defendant.

SEVENTH AFFIRMATIVE DEFENSE
(Plaintiff Has No Damage)

Plaintiff's claims are barred, in whole or in part, because plaintiff has suffered no damage or irreparable harm.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Plaintiff did not exercise due care and did not act reasonably to protect itself or to mitigate any damages that it may have allegedly sustained by reason of Defendant's alleged conduct.

ADDITIONAL DEFENSES

GenScript reserves the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action.

WHEREFORE, Defendant demands judgment dismissing Plaintiff's claims against Defendant, denying Plaintiff's request for damages, and awarding Defendant reasonable counsel fees and costs of suit and any such other relief as the Court deems just and proper.

By: /s/ Kun Zhao
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Attorneys for Defendant,
GenScript U.S.A., Inc.

Dated: Princeton, New Jersey
March 7, 2014

DEMAND FOR A JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Defendant demands a jury trial on all claims which are triable to a jury in this action.

Respectfully submitted,

/s/ Kun Zhao, Esq.

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Dated: Princeton, New Jersey
March 7, 2014

CERTIFICATE OF SERVICE

I, Kun Zhao, Esq., hereby certify that on March 7, 2014, I caused a true and correct copy of Answer and Affirmative Defenses to Plaintiff's Complaint to be served upon the following by CM/ECF electronic filing:

Seth L. Berman
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Dated: March 7, 2014

By: /s Kun Zhao
Kun Zhao [KZ3608]